Floyd E. Ivey
Liebler, Ivey & Connor, P.S.
1141 N. Edison, Suite C
P.O. Box 6125
Kennewick, WA 99336
Telephone (509) 735-3581
Fax (509) 735-3585

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR., an individual residing in Benton County, Washington, Plaintiffs vs. IMPULSE MARKETING GROUP, INC., a Nevada Corporation, Defendants ______________________________ IMPULSE MARKETING GROUP, INC., Third-Party Plaintiff, vs. BONNIE GORDON, JAMES S. GORDON, III, JONATHAN GORDON, JAMILA GORDON, ROBERT PRITCHETT and EMILY ABBEY, Third-Party Defendants.	NO. CV-04-5125-FVS DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO RESCHEDULE OR STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant has withdrawn its Cross Motion for Summary Judgment, without prejudice.

Defendant has moved to Reschedule or Strike Plaintiff's Motion for Summary Judgment with hearing without oral argument set for October 25, 2005 at 6:30 p.m.

Plaintiff's Motion for Summary Judgment is presently set for November 2,

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581

Dockets.Justia.com

2005. Defendant brings to the court's attention that Plaintiff has not filed its LR 56.1 Reply in response to Defendant's Response to Plaintiff's Statement of Material Fact which was filed October 14, 2005. The Defendant observes that the Court's Order of October 7, 2005 granting Defendant authority to file Defendants Response to Plaintiff's Statement of Material Fact concluded with the statement "Defendant's Reply Statement of Material Facts shall be filed by 5 p.m. on October 21, 2005." It is likely that the filing of a Reply Statement referred to the Plaintiff and not to the Defendant.

Plaintiff has Responded, on October 20, 2005, to Defendant's Motion to Reschedule or Strike Plaintiff's Motion for Summary Judgment by its MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO RESCHEDULE OR STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

Therein, at page 2/lines 13-14 Plaintiff states "The Plaintiff therefore agrees with the Defendant that the Court should strike the Plaintiff's pending motion." with the qualification that the Court first dismisses the Defendant's counterclaims and Third Party claims. These positions are mutually exclusive. Either the pending Plaintiff's Motion for Summary Judgment is rescheduled or stricken or the Court must hear and decide. Plaintiff makes perfectly clear that its Motion for Summary Judgment is limited to Defendant's counterclaims and Third Party Claims.

Inexplicitly Plaintiff does not address the fact that there has been no discovery in this case. The Defendant has asserted, in the Defendant's Motion to Reschedule or Strike Plaintiff's Motion for Summary Judgment, that Defendant is unable to respond to Plaintiff's LR 56.1 Statement of Material Facts without Discovery on the issues Plaintiff states as Material Facts. Plaintiff's Statement of Material Facts are largely a reassertion of the bear allegations from Plaintiff's

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581

Complaint.

Plaintiff's response is that Defendant's inability to respond to Plaintiff's Statements of Material Fact is an admission "...that it cannot articulate ...evidentiary support..." for the Defendant's counterclaims and Third Party Claims. Defendant's burden, in Responding to Plaintiff's LR56.1 Statement of Material Fact, is relative to those facts which Plaintiff contends to be Material Facts. Defendant's burden, is not to recite Defendant's basis for bringing the counterclaims and Third Party Claims.

Plaintiff states, page 3/line 15, that "...the Defendant seeks the Court's permission to add further injury to the Plaintiff and the Third Party Defendants by forcing them to incur the significant legal expenses that accompany formal discovery..." Formal discovery is the means by which statements contended by a party to be "Material Facts" are tested to see if they are disputed.

Plaintiff's statement, page 3/line 20 to page 4/line 6, suggests that the Defendant has wholly failed to respond to Plaintiff LR 56.1 Statement of Material Fact. However, Defendant was able, without Discovery, to respond to Plaintiff's Statements of Material Fact 4, 6, 10, 11, 12, 13, 15, 16, 17, 25 and 25 and to respond in part to 14 and 18.

Defendant respectfully requests that discovery be allowed prior to the hearing of Plaintiff's Motion for Summary Judgment.

DATED this 21th day of October, 2005.

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE

By /s/ FLOYD E. IVEY
FLOYD E. IVEY, WSBA #6888
Local Counsel for Defendant

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581

I hereby certify that on October 21, 2005, I electronically filed **DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO IMPULSE MARKETING GROUP, INC., DEFENDANT'S MOTION TO RESCHEDULE OR STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Douglas E. McKinley, Jr., Peter J. Glantz and Sean A. Moynihan. I hereby certify that I have served the foregoing to the following non-CM/ECF participants by other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Robert Pritchett and Emily Abbey. I hereby certify that I have served the foregoing to the following persons who are non-CM/ECF participants named in this lawsuit, but who have not yet been served or entered an appearance in this lawsuit by other means: Jamila Gordon.

S/ FLOYD E. IVEY
FLOYD E. IVEY

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581